

REMARKS

Entry of the foregoing amendments, reconsideration and reexamination of the subject application, as amended, pursuant to and consistent with 37 C.F.R. § 1.112, and in light of the remarks which follow, are respectfully requested.

1. Status of the Claims

Claims 1-16, 18, 20-23 and 25-28 are pending as correctly indicated in the Office Action Summary. Upon entry of this amendment, Claims 1-16, 18, 20-23, 25-28, and 30-31 are pending.

Applicants have amended Claim 1 to restore subject matter which was previously canceled. Claims 30-31 have been added to restore original claims 17 and 19.

Amendments to the claims are supported by at least the claims as originally filed. Claims 1-16, 18, and 30-31 correspond to the elected Group.

No prohibited new matter is believed to have been introduced by entry of these amendments. Applicants reserve the right to file a divisional or continuation application on any subject matter which was canceled by way of this amendment.

2. Election of Group I

Applicants election *with traverse* of Group I (Claims 1-19), which are drawn to a method for treating nerve disorders in a mammal has been acknowledged. The restriction requirement has been made final.

Claims 17 and 19 were previously canceled and Claim 1 was amended. By the present amendment, Claim 1 is amended and Claims 30-31 are added to restore subject matter that was previously canceled. Claims 1-16, 18, and 30-31 correspond to Group I.

3. Election of Species

Applicants election, *with traverse*, of the TNF- α inhibitor species, CDP-870, and a nerve root injury, within Group I has been acknowledged. In view of the traversal, the requirement of a species election has been withdrawn. In view of the withdrawal of the

species election requirement, Claim 1 has been amended and Claims 30-31 added to restore previously canceled non-elected species. The Claims of Group I are under examination as presented.

4. Oath/ Declaration

The Examiner has asserted that the Declaration of the inventors is defective in that the citizenship of Björn Rydevik is allegedly not identified. This was true of the Declaration filed on June 21, 2001. However, on September 13, 2001 a corrected Declaration, which is believed to comply with 37 C.F.R. § 1.63, was submitted. The citizenship of Björn Rydevik is identified on the corrected Declaration, which also identifies the subject Application by serial number and filing date.

5. Double Patenting

Claims 1-16 and 18 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claims 3-18 of copending Application No. 09/760,810 and Claims 35-51 of copending Application No. 09/743,852. Claim 8 stands provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 3 and 6-10 of copending Application No. 09/760.811.

The rejections are provisional because the purportedly conflicting claims have not yet been patented. Applicants will address these rejections in the appropriate application if/when the rejections become non-provisional in nature and thus request that the rejection be held in abeyance.

6. Rejection under 35 U.S.C. § 102(e)

Claims 1-16 and 18 stand rejected under 35 U.S.C. § 102(e) or § 103(a) as allegedly unpatentable over Tobinik, U.S. Patent No. 6,419,944, which has a filing date of April 5, 2001. If the rejection is under 35 U.S.C. § 103(a), the reference could only be available as prior art under 35 U.S.C. § 102(e). The rejection is respectfully traversed,

because the presently claimed subject matter was invented by the applicants prior to the April 5, 2001 filing date of the reference.

Applicants submit herewith a Declaration pursuant to 37 C.F.R. § 1.131, signed by both named inventors, that proves that the presently claimed subject matter, which is alleged to be disclosed by the reference, was invented prior to April 5, 2001. That the invention was at least conceived prior to the reference date is demonstrated by a draft patent application describing the invention that was prepared and transmitted to Applicants' representative in the United States prior to April 5, 2001. Exhibit A, attached to the Declaration and referred to therein, shows pages 1-3 and 6 of the draft application containing a representative description of the claimed subject matter.

Further, the Declaration establishes that there was diligence in pursuing the filing of the patent application from at least April 3, 2001 until the present application was filed on April 6, 2001. Diligence is demonstrated by the brevity of this period during which corrections and revisions to the application were made through communications with patent representatives in the United States through representatives in Sweden.

For at least the above reasons, the reference is not prior art under 35 U.S.C. § 102(e). Accordingly, Applicants request reconsideration and withdrawal of the rejection.

CONCLUSION

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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Date: May 22, 2003